vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1743 OF 2005

M/s.Adwani Orlikon Ltd. ... Petitioner

V/s.

Machindra Govind Makasare & Ors. ... Respondents

Mr.K.S. Bapat for Petitioner
Mr.Neel Helekar for Respondent Nos.1 and 2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 6, 2005**

P.C.:

. The petitioner has challenged the order passed by the Industrial Court in a complaint filed by the Respondent-workmen under Item 9 of Schedule IV of the MRTU & PULP Act and the Revision Application from that complaint. The Labour Court has by a reasoned order found that the Petitioner has violated the provisions of section 25F and that the termination of the services of the Respondent-workmen was illegal. The Industrial Court has confirmed the order.

2. By the order of termination dated 31.12.1988, the Petitioner had terminated the services of the respondent Nos.1 and 2. This dispute was referred for adjudication before the Labour Court in a Reference.

The Reference was decided on 29.9.1995 directing reinstatement of the workmen in his original post with continuity of service and full backwages w.e.f. 31.12.1988. The Petitioner notionally reinstated the workmen on 10.1.1996 by paying them backwages upto that date and informing them by the same letter that their services stood terminated on account of the transfer of undertaking to the Ramnagar plant. According to the Petitioner, it was not possible to reinstate the respondents in the Ramnagar plant where they had worked after the transfer of the undertaking.

3. Exception is taken to the orders passed by the Courts below by contending that the impugned orders directing reinstatement in the Chinchwad plant of the Petitioner is illegal because the Respondents had never worked there. It is also submitted that there can be no dispute that the Ramnagar plant has been taken over and the services of the workmen have been dispensed with under section 25FF of the Industrial Disputes Act. Therefore, the Petitioner had notionally reinstated the workmen on 10.1.1996.

4. The transfer of the undertaking allegedly took place some time in March 1994. The award is dated 29.9.1994. There is no observation, much less a finding

recorded in the award to indicate that there was such a transfer of the undertaking under section 25FF of the Industrial Disputes Act. In the present case also there is no documentary evidence on record establishing that in fact there was closure of the concern of Ramnagar. If indeed there was a closure, it is difficult to understand how the Petitioner had notionally reinstated the workmen on 10.1.1996 when the undertaking itself had allegedly been sold out in March 1995. The termination letter was issued to the workmen on 5.2.1996. There is no explanation whatsoever as to how the Petitioner could have terminated the services of the workmen having reinstated them on 10.1.1996. Reliance is placed on the judgment in the *S.B. Bhandare v/s. Administrator, Saswad Mali SSK Ltd.*, **1992 I CLR 309** to submit that in the facts of a similar case, this Court held that the workman would have no right of reinstatement against the subsequent employer. In my view, this judgment has no application whatsoever to the present case. The Respondent-workmen are not seeking reinstatement in the new concern to which the Petitioner had allegedly transferred its Ramnagar plant. The workmen were employed by the Petitioner Company as gardeners and were assigned work in the Ramnager plant. The Labour Court has directed that since the Ramnagar plant is allegedly closed the Petitioner should assign them work in their

Chinchwad plant.

3. In these circumstances, both the Courts below rightly concluded that there is an illegal termination of service of the respondents by the Petitioner. The Labour Court has rightly directed the Petitioner to reinstate the workmen with continuity of service and full backwages. The Industrial Court having confirmed the order, I see no reason to interfere. Petition rejected.